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May 31, 1979

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10406  
RECORDATION NO. 10406 Filed 1425

JUN 1 1979-10 10 AM

INTERSTATE COMMERCE COMMISSION

Interstate Commerce Commission  
12th and Constitution Avenue, N.W.  
Washington, D. C. 20423.

Dear Sirs:

Pursuant to the provisions of Section 11303 of the Interstate Commerce Act, as revised and recodified by Public Law 95-473, and the regulations of the Interstate Commerce Commission promulgated thereunder, we are transmitting for filing and recording executed counterparts or originals of the following documents:

1. Lease Agreement dated as of May 31, 1979, between National Railway Utilization Corporation and Pickens Railroad Company, as lessees, and Heleasco Eleven, Inc., as lessor;
2. Assignment of Lease dated as of May 31, 1979 executed by Heleasco Eleven, Inc., as assignor, and assigning the above-referenced Lease Agreement to First Maryland Leasecorp, as assignee, together with a Consent and Agreement executed by National Railway Utilization Corporation and Pickens Railroad Company.
3. Security Agreement dated as of May 31, 1979 by and between Heleasco Eleven, Inc., as debtor, and First Maryland Leasecorp, as secured party.

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INTERSTATE COMMERCE COMMISSION

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INTERSTATE COMMERCE COMMISSION

*Countersign*  
*Ronald M. Cherry*

Interstate Commerce Commission,  
May 31, 1979,  
Page Two.

4. Closing Agreement dated as of May 31, 1979 by and between Heleasco Eleven, Inc., National Railway Utilization Corporation, Pickens Railroad Company and First Maryland Leasecorp.

The names and addresses of the parties to these agreements are listed below.

Heleasco Eleven, Inc.  
Suite 203  
Springer Building  
3411 Silverside Road  
Wilmington, Delaware 19810

Pickens Railroad Company  
402 Cedar Rock Street  
Pickens, South Carolina 29671

National Railway Utilization Corporation  
1100 Centre Square East  
1500 Market Street  
Philadelphia, Pa. 19102

First Maryland Leasecorp  
25 South Charles Street  
Baltimore, Maryland 21201

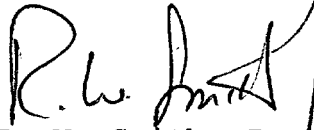
A general description of the Equipment covered by the Lease Agreement and Assignment of Lease is contained in Exhibit A to this letter.

The above-identified documents have not been previously recorded with the Interstate Commerce Commission. Please accept for recordation two counterparts of each document, stamp the remaining counterparts with the appropriate recordation number and return them with your confirmed receipt by my delivering messenger. Please record and cross reference all documents against National Railway Utilization Corporation, Pickens Railroad Company and Heleasco Eleven, Inc.

Interstate Commerce Commission,  
May 31, 1979,  
Page Three.

The filing and recordation fees in the amount of  
\$160.00 are submitted herewith.

Very truly yours,



R. W. Smith, Jr.

RWSJr/fja  
Enclosures

RECORDATION NO. 10406/C  
Filed 1425  
JUN 1 1979-10 10 AM  
INTERSTATE COMMERCE COMMISSION

CLOSING AGREEMENT

Closing Agreement dated as of May 31, 1979 among HELEASCO ELEVEN, INC., a Delaware corporation ("Lessor"), PICKENS RAILROAD COMPANY, a South Carolina corporation ("Railroad"), and NATIONAL RAILWAY UTILIZATION CORPORATION, a South Carolina corporation ("NRUC"), and FIRST MARYLAND LEASECORP, a Maryland corporation (the "Lender").

NRUC has entered into a purchase agreement with Whittaker Corporation (Berwick Forge & Fabricating Division) and a purchase agreement with Evans Transportation Company (Southern Iron & Equipment Company Division), each dated as of May 15, 1979 (hereinafter collectively called the "Builders") providing for the purchase by NRUC of certain railroad cars. The purchase agreements referred to in the preceding sentence are hereinafter collectively called the Purchase Agreements; and the railroad cars being purchased pursuant to the Purchase Agreements are hereinafter called the Equipment.

The Lessor and NRUC propose to enter into certain purchase agreement assignments (hereinafter collectively called the "Purchase Agreement Assignments") pursuant to which NRUC assigns its rights to acquire the Equipment to the Lessor.

The Lessor proposes to acquire the Equipment pursuant to the Purchase Agreement Assignments and lease the Equipment to Railroad and NRUC, as co-lessees (hereinafter collectively called the Lessee or the Lessees) pursuant to a Lease of Railroad Equipment to be dated as of the date hereof (hereinafter called the Lease), between the Lessor and the Lessee.

In order to finance the purchase of the Equipment pursuant to the Purchase Agreement Assignments, the Lessor desires to borrow from the Lender on a non-recourse basis, and the Lender is willing to lend to the Lessor on such basis, an amount not in excess of 70% of the Purchase Price of the Equipment (as defined in the Lease), all upon and subject to the terms and conditions hereinafter set forth. As more fully hereinafter provided, such borrowings shall be secured by the Lease and the Equipment to be evidenced by a security agreement to be dated the date hereof (hereinafter called the "Security Agreement") from the Lessor to the Lender and an assignment by the Lessor to the Lender of the Lessor's interest in and to the Lease pursuant to an Assignment of Lease to be dated the date hereof (herein called the "Assignment") to be executed pursuant to the Security Agreement. The Security Agreement and the Assignment are herein collectively called the "Security Documents". The Lessee will consent to the Assignment pursuant to a Consent and Agreement to be dated as of the date hereof (hereinafter called the Consent).

NOW, THEREFORE, in consideration of the agreements hereinafter contained, the parties hereto, intending to be legally bound hereby, agree as follows:

1. Subject to the terms and conditions hereof, Lessee will assign its right to acquire the Equipment to Lessor and will lease the Equipment

from Lessor under the Lease.

Subject to the terms and conditions hereof, Lessor will purchase the Equipment from the Builders, finance its purchase with Lender and lease the Equipment to Lessee under the Lease.

2. Subject to the terms and conditions hereof, Lender hereby agrees to make a loan to the Lessor on the Closing Date hereinafter specified in the principal amount determined as hereinafter provided, but not exceeding \$4,180,596. Such loan shall be evidenced by a non-recourse promissory note (hereinafter called the "Note") of the Lessor, payable to the order of the Lender (or to the order of such nominee or nominees of the Lender as the Lender may specify by written notice delivered to the Lessor not less than three business days prior to such Closing Date) and in the principal amount thereof.

The Note shall be dated the Closing Date and shall mature in sixty-one (61) consecutive quarter-annual installments of principal and interest.

Interest, as that term is used herein, shall consist of basic interest on the outstanding principal balance at the rate of 11.50% per annum ("Basic Interest"), and, subject to the provisions of paragraph 5 hereof, additional interest on the outstanding principal balance at the rate of 3.25% per annum ("Additional Interest"). Interest shall be computed on the basis of a 360-day year of twelve 30-day months.

The first quarterly installment shall be due on July 1, 1979 and shall be in the amount of the Interest accrued as of that date. Thereafter, installments of principal and interest shall be payable on the first day of each succeeding sixty (60) quarters (or if any such date is not a business day, on the next succeeding business day). The amount of such installment shall consist of (1) principal and Basic Interest computed by reference to Schedule 1 attached to the Note, plus (2) Additional Interest accrued to the date of such payment.

The Note shall not be subject to prepayment and redemption in whole or in part at the option of the Lessor prior to the express maturity date thereunder unless the Lessor shall establish to the satisfaction of the Lender that the Lessor is ready and able to prepay the Note hereunder from the proceeds of additional borrowings in which the Lessor would be obligated to pay interest at a rate not in excess of 11.5% per annum, in which event, the Note shall be prepaid, without premium or penalty, as soon as practical thereafter, provided, however, should such prepayment occur within thirty (30) days of the date of the Note, the amount of accrued Interest to which Lender shall be entitled to receive upon such prepayment shall be an amount equal to thirty (30) days' Interest.

Upon delivery to the Lessor of the Equipment pursuant to the Purchase Agreement and the receipt by the Lessor of the Certificate of Inspection and

Acceptance (as defined in the Purchase Agreement and the Lease), Lessor will promptly deliver one copy or counterpart thereof to Lender and give Lender notice of the Closing Date.

After receipt (but only after receipt) by the Lender of such notice and of the Certificate of Inspection and Acceptance with respect to all of the Equipment, all in form and substance satisfactory to the Lender and to Lender's counsel, and upon completion of Conditions Precedent set forth in paragraph 4 hereof, delivery of the Note by Lessor hereof to Lender's counsel, and receipt of evidence that Lessor has or will concurrently, with the disbursement by Lender hereunder, pay to Builders an amount equal to the difference between the Purchase Price of the Equipment and the principal amount of the loan as hereinafter provided, the Lender will pay, for the benefit of the Lessor, in accordance with the Lessor's instructions, pursuant to the Purchase Agreement, on the Closing Date, by bank wire transfer of immediately available funds, the principal amount of the loan determined as hereinafter set forth.

The principal amount of the loan to be made pursuant to this paragraph 2 of this Agreement on the Closing Date shall (subject to the limitation set forth above) be 70% (to the nearest whole dollar) of the amount paid or payable by the Lessor on the Closing Date pursuant to the Purchase Agreements.

3. Each Lessee represents and warrants as follows:

(a) Each Lessee is a corporation duly incorporated, validly existing and in good standing under the laws of the State of South Carolina and is duly qualified to do business and is in good standing in such other jurisdictions in which the failure to so qualify or be in good standing might materially and adversely affect the ability of the Lessee to perform its obligations under this Agreement, the Lease or the Consent.

(b) Each Lessee has full power, authority and legal right to carry on its business as now conducted and is duly authorized and empowered to execute and deliver this Agreement, the Lease, the Consent and that certain Income Tax Indemnification Agreement, dated the date hereof, ("Tax Agreement") by and between Lessees and Lessor and to fulfill and comply with the terms, conditions and provisions hereof and thereof; this Agreement, the Lease, the Consent and the Tax Agreement have been duly authorized, and have been, or will be on or before delivery of any Unit of Equipment, duly executed and delivered and, assuming due authorization, execution and delivery thereof by the other parties hereto, constitute or will, when duly executed and delivered, constitute valid, legal and binding agreements, enforceable in accordance with their terms.

(c) There are no actions, suits or proceedings (whether or not purportedly on behalf of either of the Lessees) pending or (to the knowledge of either of the Lessees) threatened against or affecting either of the Lessees or any property or rights of

either of the Lessees at law or in equity, or before any commission or other administrative agency, which could materially and adversely affect the condition, financial or other, of either of the Lessees; and, except as aforesaid, each Lessee is not, to its knowledge, in default with respect to any order or decree of any court or governmental commission, agency or instrumentality which could materially and adversely affect the condition, financial or other, of such Lessee.

(d) Each Lessee is not a party to any agreement or instrument or subject to any charter or other corporate restriction materially and adversely affecting the business, present or proposed, of such Lessee, or the operations, property or assets or condition, financial or other, of such Lessee.

(e) Neither the execution and delivery of this Agreement, the Lease, the Consent or the Tax Agreement nor the consummation of the transactions herein and therein contemplated or the fulfillment of, or compliance with, the terms and provisions hereof and thereof will conflict with, or result in a breach of, any of the terms, conditions or provisions of the certificate of incorporation or the by-laws of either of the Lessees or of any bond, debenture, note, mortgage, indenture, agreement or other instrument to which either of the Lessees is now a party or by which either of the Lessee's or their property may be bound, or constitute (with the giving of notice or the passage of time or both) a default thereunder, or result in the creation or imposition of any lien, charge, security interest or other encumbrance of any nature whatsoever upon any property of either of the Lessees or upon the Equipment pursuant to the terms of such agreement or instrument.

(f) Neither the execution and delivery by the Lessees of this Agreement, the Lease, the Consent or the Tax Agreement nor the consummation of the transactions herein and therein contemplated nor the fulfillment of, or compliance with, the terms and provisions hereof and thereof will conflict with, or result in a breach of, any of the terms, conditions or provisions of any law, or any regulation, order, injunction or decree of any court or governmental instrumentality or arbitrator applicable to either of the Lessees.

(g) No authorization or approval is required from any governmental or public body or authority having jurisdiction over either of the Lessees or the Equipment in connection with the execution and delivery by the Lessees of this Agreement, the Lease, Consent or the Tax Agreement, or the fulfillment of or compliance with the terms, conditions and provisions hereof and thereof or the transactions contemplated thereby.

(h) Each Lessee has filed all foreign, Federal, state and local tax returns which (to its knowledge) are required to be filed, and has paid or made provisions for the payment of all taxes which have or may become due pursuant to said returns or pursuant to any assessment received by it, other than taxes which are being contested in good faith and which, in the aggregate, do not involve material amounts.

(i) NRUC has furnished to the Lessor and the Lender (i) consolidated balance sheets of NRUC as of December 31, 1978 and related consolidated statements of income and retained earnings for the year then ended; such consolidated financial statements are in accordance with the books and records of NRUC and have been prepared in accordance with generally accepted accounting principles, applied on a consistent basis throughout the period covered thereby and on a basis consistent with prior periods; and such statements present fairly the financial condition of NRUC at such date and the results of its operations for such period. There has not been any material adverse change in the financial condition of NRUC since December 31, 1978.

(j) Each Lessee is not in default in the payment of principal of or interest on any indebtedness for borrowed money or in default under any instruments or agreements under or subject to which any indebtedness for borrowed money has been issued or in default under any long-term rental obligation under which such Lessee is the lessee, and no event has occurred and is continuing under the provisions of any such instrument or agreement which, with the lapse of time or the giving of notice or both, would constitute an event of default thereunder, other than defaults which would not have a **material adverse effect** on the Lessees' ability to perform its obligations under this Agreement, the Lease, the Consent or the Agreement.

(k) Prior to the delivery of any unit of Equipment pursuant to the Lease, the Security Documents, the Lease, and all assignments thereof will be duly filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 and, within 21 days from the execution thereof, deposited with the Registrar General of Canada (and provision made for publication of notice of such deposit in The Canada Gazette) pursuant to Section 86 of the Railway Act of Canada, and such filing with the Interstate Commerce Commission will protect the Lender's rights therein and in the Equipment and the Lessor's rights in and to the Lease and the Equipment, and such deposit with the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada will protect the Lessor's rights in and to the Lease and the Equipment and no other filing, recording or deposit (or giving of notice) with any other Federal, state or local government or agency thereof is necessary in order to protect the rights of the Lender or the Lessor under the Security Documents or the Lease in and to the Equipment in any state of the United States or the District of Columbia.

(l) No mortgage, deed of trust or other lien of any nature whatsoever which now covers or affects, or which may cover or affect, any property or interest therein of the Lessee, now attaches or hereafter will attach to the Equipment or in any manner affects or will affect adversely the Lessor's or the Lender's right or interest therein.



4. The obligation of the Lender to make the loan on the Closing Date shall be subject to the receipt by the Lender on or prior to the Closing Date of the following documents dated the Closing Date, in form and substance satisfactory to Lender and its counsel:

(a) An opinion of counsel for the Lender, to the effect that

(i) this Agreement has been duly authorized, executed and delivered by Lender and constitutes a legal, valid and binding instrument enforceable in accordance with its terms;

(ii) the Note, the Security Documents and the Lease have been duly authorized, executed and delivered and each is a legal and valid instrument, binding on the parties thereto and enforceable in accordance with its terms;

(iii) the Lease Assignment and the Consent have been duly authorized, executed and delivered and are legal, valid and binding instruments;

(iv) the Security Documents, the Lease and the Lease Assignment have been duly filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 and a financing statement evidencing the Lender's security interest in the Lease, the Equipment and the other Collateral (as defined in the Security Agreement) has been mailed for filing against the Lessor in the State of Delaware and no other filing or recordation is necessary for the protection of the rights of the Lender therein or in the Equipment in any state of the United States of America or the District of Columbia;

(v) no authorization or approval from any governmental or public body or authority of the United States of America, or of any of the States thereof or the District of Columbia is, to the knowledge of said counsel, necessary for the execution, delivery and performance of this Agreement, the Security Documents, the Lease and the Lease Assignment;

(vi) the legal opinions referred to in subparagraphs (b), (c) and (d) of this Paragraph 4 are satisfactory in form and substance to said counsel and that, in his opinion, the Lender and he are justified in relying thereon;

and as to such other matters incident to the transactions contemplated by this Agreement as the Lender may reasonably request.

(b) An opinion of counsel for the Lessor, to the effect that

(i) the Lessor is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation;

(ii) this Agreement, the Note, the Security Documents, the Lease, and the Lease Assignment and the Purchase Agreement Assignments have been duly authorized, executed and delivered by the Lessor and, assuming due authorization, execution and delivery of such agreements by the other parties thereto, are legal and valid instruments binding upon the parties thereto and enforceable against the parties thereto in accordance with their terms;

(iii) no authorization or approval from any governmental or public body or authority of the United States of America, or of any of the States thereof or the District of Columbia, is, to the knowledge of said counsel, necessary for the execution, delivery and performance of this Agreement, the Note, the Security Documents, the Lease, the Purchase Agreement Assignments, or the Lease Assignment by the Lessor;

(iv) the Lessor has the corporate power, authority and legal right under Delaware law to carry on its business as now conducted and to execute and deliver this Agreement, the Note, the Security Documents, the Lease, the Purchase Agreement Assignments and the Lease Assignment and to fulfill and comply with the terms, conditions and provisions hereof and thereof; and

(v) neither the execution and delivery of this Agreement, the Note, the Security Documents, the Lease or the Lease Assignment nor the consummation of the transactions herein and therein contemplated or the fulfillment of, or compliance with, the terms and provisions hereof and thereof will conflict with, or result in a breach of, any of the terms, conditions or provisions of the charter documents or the by-laws of the Lessor or of any bond, debenture, note, mortgage, indenture, agreement or other instrument to which the Lessor is now a party or by which it or its property may be bound, or constitute (with the giving of notice or the passage of time or both) a default thereunder.

(c) An opinion of counsel for the Lessee, to the effect set forth in clauses (i), (ii), (iii), and (vi) of subparagraph (a) of this Paragraph 4 in so far as such matters relate to the Lessee,\* (it being understood that such counsel may assume the due authorization, execution and delivery of any agreement referred to therein by any party other than the Lessee) and to the further effect that:

(i) each Lessee is a corporation duly incorporated, validly existing and in good standing under the laws of the State of South Carolina and is duly qualified to do business and in good standing in such other jurisdictions in which the failure to so qualify or be in good standing might materially and adversely affect the ability of such Lessee to perform its obligations under this Agreement, the Lease or the Consent;

\*and for NRUC with respect to the Purchase Agreements and the Purchase Agreement Assignments

(ii) neither the execution and delivery of this Agreement, the Lease or the Consent nor the consummation of the transactions herein and therein contemplated or the fulfillment of, or compliance with, the terms and provisions hereof and thereof will conflict with, or result in a breach of, any of the terms, conditions or provisions of the certificate of incorporation or the by-laws of either Lessee or, to the best of our knowledge after inquiry, of any bond, debenture, note, mortgage, indenture, deed of trust, lien, agreement or other instrument to which the Lessee is now a party or by which it or its property may be bound, or constitute (with the giving of notice or the passage of time or both) a default thereunder;

(iii) neither the execution and delivery by either of the Lessees of this Agreement, the Lease or the Consent nor the consummation of the transactions herein and therein contemplated nor the fulfillment of, or compliance with, the terms and provisions hereof and thereof will conflict with, or result in a breach of, any of the terms, conditions or provisions of any law, or any regulation, order, injunction or decree of any court or governmental instrumentality or arbitrator applicable to either of the Lessees;

(iv) no mortgage, deed of trust or other lien of any nature whatsoever which now covers or affects any property or interest therein of the Lessee, now attaches or hereafter (pursuant to the terms of the relevant instrument or instruments) will attach to the Equipment or in any manner affects or will affect adversely the right, title and interest of the Lessor and Lender therein;

(v) each Lessee has the full corporate power, authority and legal right to enter into and perform its obligations under this Agreement, the Lease and the Consent and the execution, delivery and performance of this Agreement, the Lease and the Consent have been duly authorized by all necessary corporate action on the part of the Lessee, do not require any stockholder approval or approval or consent of any trustee or holders of any indebtedness or obligations of the Lessee, or such required approvals and consents have heretofore been duly obtained, certified copies thereof having been delivered to the Lender and the Lessor;

(vi) neither the execution and delivery by either of the Lessees of this Agreement, the Lease and the Consent, nor the consummation of any of the transactions by the Lessee contemplated hereby or thereby, requires the consent or approval of, the giving of notice to, or the registration with, or the taking of any other action in respect of, the Interstate Commerce Commission or any other Federal, state or other governmental authority or agency having jurisdiction over the Equipment or

the Lessee, except the filing of the Lease with the Interstate Commerce Commission pursuant to 49 U.S.C. §11303;

(vii) to the knowledge of such counsel, there are no pending or threatened actions or proceedings before any court, arbitrator, administrative agency or governmental body which will materially adversely affect the condition, business or operations of either of the Lessees or the ability of either of the Lessees to perform its obligations under this Agreement, the Lease and the Consent; and

(viii) the Security Agreement, the Lease and the Lease Assignment have been duly filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 and will be within 21 days deposited with the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada and provision has been made for publication of notice of such deposit in The Canada Gazette in accordance with said Section 86 and such filing pursuant to 49 U.S.C. § 11303 will protect the Lender's rights therein and in the Equipment and the Lessor's rights in and to the Lease and the Equipment, and such deposit with the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada will protect the Lessor's rights in and to the Lease and the Equipment, and no other filing, recording or deposit (or giving of notice) with any other Federal, state or local government or agency thereof is necessary in order to protect the rights of the Lender or the Lessor under the Security Documents or the Lease in and to the Equipment in any state of the United States or the District of Columbia.

(d) One or more bills of sale from the Builder to the Lessor evidencing the transfer to the Lessor of title to the Equipment and warranting to the Lessor that at the time of delivery to the Lessor under the Purchase Agreement the Builder had legal title to such Equipment and good and lawful right to sell such Equipment and that title to such Equipment was free of all claims, liens and encumbrances of any nature except only the rights of the Lessee under the Lease and of the Lender under the Security Agreement.

(e) Duplicate invoice or invoices for the Equipment marked "paid" accompanied by or having endorsed thereon a certification by the Lessee as to the correctness of the prices stated therein.

(f) An opinion of counsel for each Builder to the effect that (i) the Purchase Agreement and the Bill of Sale have been duly authorized, executed and delivered by the Builder and, assuming due authorization, execution and delivery by the other parties thereto, are valid and binding instruments enforceable in accordance with their terms and (ii) the Bill of Sale is effective to transfer title to the Equipment to the Lessor free and clear of any liens, claims, security interests or other encumbrances arising from or through the acts of the Builder.

(g) A Certificate of an officer of each Lessee, to the effect that (i) such Lessee is not currently in default nor does a condition exist or has an event occurred which, with the lapse of time and/or the giving of notice, would constitute a default under this Agreement, the Lease or the Consent, (ii) such Lessee is not in default in the payment of or interest on any indebtedness for borrowed money or in default under any instruments or agreements under or subject to which any indebtedness for borrowed money has been issued or in default under any long-term rental obligation under which the Lessee is the lessee, and no event has occurred and is continuing under the provisions of any such instrument or agreement which, with the lapse of time and/or giving of notice would constitute an event of default thereunder, other than defaults which would not have a material adverse effect on such Lessee's ability to perform its obligations under this Agreement, the Lease or the Consent, (iii) the representations and warranties of the Lessee contained in Paragraph 3 hereof are true and correct as of the date of such certificate with the same effect as if made on such date, and (iv) that no Federal tax liens (including tax liens filed pursuant to Section 6323 of the United States Internal Revenue Code of 1954, as amended) or, to the best of the knowledge and belief of such the Lessee, other tax liens have been filed and are currently in effect against such Lessee (or any members of the affiliated group within the meaning of Section 1504 of the Internal Revenue Code of 1954, as amended, of which the Lessee is a member) which could adversely affect the interest of the Lender in the Equipment or the Lease or the rentals or other payments due or to become due thereunder.

(h) An insurance certificate evidencing the coverage required under the Lease, except to the extent waived by Lender and Lessor.

In giving the opinions specified in subparagraphs (a), (b), (c) and (d) of this Paragraph 4, counsel may qualify its opinion to the effect that any agreement is enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium, or other similar laws affecting the enforcement of creditors' rights generally. In giving the opinion specified in subparagraph (a) of this Paragraph 4, counsel may rely (i) as to authorization, execution and delivery by the Builders of the documents executed by the Builders, on the opinion of counsel for the Builder, and as to title to the Equipment at the time of delivery thereof by the Builders to the Lessor, (ii) as to the authorization, execution and delivery by the Lessee of the documents executed by the Lessee on the opinion of counsel for the Lessee and (iii) as to the authorization, execution and delivery by the Lessor of the documents executed by the Lessor on the opinion of counsel for the Lessor. The opinions of counsel for the Builders and the opinion of counsel for the Lessee shall also be addressed to the Lessor.

5. The obligation of the Lessor to purchase and lease the Equipment to the Lessee and to finance its acquisition of the Equipment with the Lender is subject to the satisfaction of the conditions set forth in Paragraph 4, other than subparagraph 4(a), Lessor and Lessee having entered into the Tax Agreement and the receipt of the following documents on or prior to the closing date in form and substance satisfactory to Lessor:

(a) a favorable opinion of Lessor's special tax counsel;

(b) an opinion of counsel for the Lessee as to the effect that the Tax Agreement was duly authorized, executed and delivered and constitutes the legal, valid and binding agreement of Lessees enforceable in accordance with its terms (subject to the same exceptions as set forth in the first sentence of the last paragraph of Paragraph 4 hereof.

(c) an opinion of counsel for Lender to the effect that this Agreement and the Security Agreement were duly authorized, executed and delivered by the Lender and constitute the valid, binding and legal obligation of Lender. Counsel may rely upon Lessor's counsel as to matters of Pennsylvania law.

6. At any time or times after the date of the Note, Lender, at the request of Lessee or Lessor, agrees to sell, transfer and assign its right, title and interest in and to the Note and the Security Documents to a lender or lenders upon the receipt, in immediately available funds, of the then outstanding principal and accrued interest. \*

Upon such sale, transfer or assignment of all or any portion of this Note, the Additional Interest accrued to such date shall thereupon become due and payable, and the provisions hereof requiring Additional Interest thereafter shall terminate with respect to the portion sold or transferred and be of no further force or effect without further act or instrument and thereupon and to the same extent in the event of a partial sale, transfer or assignment, the obligation of the Lessee for Additional Rent for periods subsequent to the date of transfer, sale or assignment hereof shall terminate as of such date. Should such transfer, sale or assignment occur within thirty (30) days from the date hereof, then such Additional Interest shall be in an amount equal to thirty (30) days' Additional Interest.

Lessee and Lessor agree to make such changes to the Lease and to provide such certificates of no defaults and no liens, and Lessor agrees to make such changes to the Note and Security Documents as such lender or lenders may reasonably require as a condition to their acquisition of the Note and Security Documents pursuant to this Paragraph 6 or as a condition to such lender or lenders providing the financing to Lessor for the prepayment of the Note pursuant to Paragraph 2 hereof. It is understood and agreed, however, that nothing herein shall be construed to require any changes in the term of the Lease or the rent payable under or in the term of the Note, the installments payable thereunder, the interest due thereon or in the non-recourse nature of the Note and Security Agreement.

\*Any such sale, transfer or assignment will be pursuant to documents approved by the Lender, which approval will not be unreasonably withheld.

Lessee agrees that it will be responsible for the expenses of (i) Lender, including the fees and expenses of Lender's counsel, incurred in connection with this Agreement and the transactions contemplated hereby including any subsequent sale, assignment or transfer of the Note, regardless of whether or not such transactions are consummated and (ii) of Lessor, including the fees and expenses of Lessor's counsel, incurred in connection with the subsequent sale, assignment or transfer of the Note, including any changes to the Lease, Security Documents or other documents made in connection therewith.

7. The terms of this Agreement and all rights and obligations of the parties hereto hereunder shall be governed by the laws of the Commonwealth of Pennsylvania. Such terms, rights and obligations may not be changed orally but may be changed only by an agreement in writing signed by the party against whom enforcement of such change is sought.

8. This Agreement may be executed in any number of counterparts, all of which together shall constitute a single instrument. It shall not be necessary that any counterpart be signed by all the parties so long as (i) all counterparts shall be signed by the Lessor and (ii) the Lender and the Lessee shall each sign a counterpart.

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END OF THIS PAGE

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by duly authorized officers as of the date first above written.

HELEASCO ELEVEN, INC.

By R. H. Beckenloff  
Vice President

PICKENS RAILROAD COMPANY

By Woodrow B. Montef  
Vice President

NATIONAL RAILWAY UTILIZATION CORPORATION

By Woodrow B. Montef  
B R Vice President

FIRST MARYLAND LEASECORP

By W. H. V. V. B.  
Vice President



STATE OF *Delaware*  
COUNTY OF *New Castle* : SS:

On this *30th* day of May, 1979, before me personally appeared *R. L. Beckershaft*, to me personally known, who, being by me duly sworn, says that he is President of HELEASCO ELEVEN, INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*Helen P. Brown*  
Notary Public

My Commission Expires:

STATE OF *Maryland* :  
COUNTY OF *Baltimore* : SS:

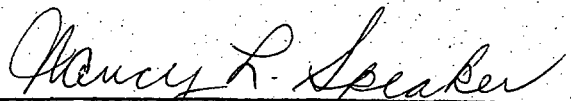
On this *31st* day of May, 1979, before me personally appeared *Michael T. Pyles*, to me personally known, who, being by me duly sworn, says that he is Vice President of FIRST MARYLAND LEASECORP, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*Gunda Lee Link*  
Notary Public

My Commission Expires: *July 1, 1982*

COMMONWEALTH OF PENNSYLVANIA )  
 ) ss:  
COUNTY OF DELAWARE )

On this 30th day of May, 1979, before me personally appeared Woodrow B. Moats, Jr. to me personally known, who, being by me duly sworn, says that he is Senior Vice President of NATIONAL RAILWAY UTILIZATION CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

  
Notary Public

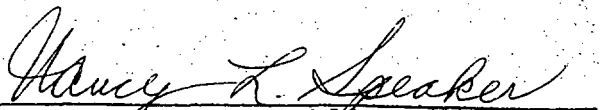
SEAL

My Commission Expires:

NANCY L. SPEAKER, Notary Public  
Radnor Twp., Delaware Co.  
My Commission Expires June 4, 1983

COMMONWEALTH OF PENNSYLVANIA )  
 ) ss:  
COUNTY OF DELAWARE )

On this 30th day of May, 1979, before me personally appeared Woodrow B. Moats, Jr. to me personally known, by me duly sworn, says that he is Vice President of PICKENS RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

  
Notary Public

SEAL

My Commission Expires:

NANCY L. SPEAKER, Notary Public  
Radnor Twp., Delaware Co.  
My Commission Expires June 4, 1983